

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAROLYN POLK-BOSTER,

Plaintiff,

No. C 09-0907 PJH

v.

**ORDER GRANTING MOTION
TO DISMISS**

AMERICAN HOME MORTGAGE
SERVICING, INC., et al.,

Defendants.

The motion of defendant American Home Mortgage Servicing, Inc. ("AHMSI") for an order dismissing the first amended complaint for failure to state a claim came on for hearing before this court on November 4, 2009. Plaintiff Carolyn Polk-Boster did not appear. AHMSI appeared by its counsel Nina Huerta. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS the motion as follows for the reasons stated at the hearing.

1. Count One, which seeks rescission under the Truth in Lending Act, 15 U.S.C. §§ 1601, et seq. and Regulation Z ("TILA"), is dismissed on the ground that plaintiff has failed to state a claim for rescission, including by failing to allege a valid offer to tender the loan proceeds.

2. Count Two, which alleges unlawful and unfair business practices in violation of California Business & Professions Code §§ 17200, et seq., is dismissed on the ground that Plaintiff has failed to state a claim under this statute against AHMSI, including by failing to allege facts showing that AHMSI engaged in any unlawful or unfair business practices with respect to plaintiff.

1 3. Count Three, which alleges "Financial Elder Abuse," under California Welfare
2 & Institutions Code § 15610.30(a), is dismissed on the ground that plaintiff has failed to
3 state a claim under this statute against AHMSI, including by failing to allege facts showing
4 that AHMSI acted abusively or wrongfully toward plaintiff.

5 4. In view of the fact that this is the second motion to dismiss, and that plaintiff
6 was previously given an opportunity to cure the defects in the complaint, but failed to do so,
7 and in further view of the fact that plaintiff did not attend the hearing, the court finds that
8 further amendment would be futile. Accordingly, the dismissal of the claims asserted
9 against AHMSI is WITH PREJUDICE.

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11 **IT IS SO ORDERED.**

12 Dated: November 5, 2009



PHYLLIS J. HAMILTON
United States District Judge